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Utah State Tax Commission v. Parson asphalt Products, Inc. : Brief of Defendant-Appellant Utah State Tax Commission

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

IN THE MATTER OF:)

Parson Asphalt Products, Inc.)
regarding special fuel tax)
liability for the years of)
October 1973 to September)
1976, before the Utah State)
Tax Commission)

Case No. 16797

BRIEF OF DEFENDANT-APPELLANT
UTAH STATE TAX COMMISSION

Review of a Decision
of the
Second Judicial District Court
Weber County
The Honorable John F. Wahlquist, Presiding

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TABLE OF CONTENTS

CASES CITED	ii
STATUTES CITED	ii
SECONDARY SOURCES CITED	ii
STATEMENT OF THE NATURE OF THE CASE	1
DISPOSITION IN THE LOWER COURT	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	4
POINT I: THE SCOPE OF THE EXEMPTION FROM TAXATION ON THE USE OF SPECIAL FUEL DOES NOT EXTEND TO PARSON IN THE INSTANT CON- TROVERSY	4
POINT II: THE TRIAL COURT'S FINDING THAT THE ROADWAY IN QUESTION WAS A TOTALLY NEW ROAD IS IN DIRECT CONTRAVENTION OF THE STIPULATION OF FACTS GOVERNING THIS CASE	10
CONCLUSION	12

TABLE OF AUTHORITIES

CASES CITED

<u>Capps v. Capps</u> , 110 Utah 468, 175 P.2d 470	12
<u>In Re Simpson's Estate</u> , 43 Cal.2d 594 275 P.2d 467 (1954)	5
<u>Jensen v. Howell</u> , 75 Utah 64, 282 P. 1034	12
<u>Jewell v. Horner</u> , 12 Utah 2d 328, 366 P.2d 594 (1961)	12
<u>Parker v. Quinn</u> , 23 Utah 332, 64 P. 961 (1901)	5

STATUTES CITED

Utah Code Ann. §27-12-2(8)	7,9
Utah Code Ann. §27-12-43.1(7)	3,7
Utah Code Ann. §27-12-56(b)	3
Utah Code Ann. §41-11-40(c)	8
Utah Code Ann. §41-11-49(a)	6,13
Utah Code Ann. §41-11-49(c)	7
Utah Code Ann. §41-11-50	1,5, 6,13
Utah Code Ann. §41-11-50(1)	4,7
Utah Code Ann. §59-24-1	3

SECONDARY SOURCES CITED

71 Am.Jur.2d, State and Local Taxation, §326 (1973)	7
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Case No. 16797

BRIEF OF DEFENDANT-APPELLANT
UTAH STATE TAX COMMISSION

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the Second District Court's decision which set aside the order of the Utah State Tax Commission which had required the respondent to pay the special fuel tax for and during the reconstruction of the road to Antelope Island.

DISPOSITION IN THE LOWER COURT

The Second District Court, sitting as the tax court, found that the fuel used by Plaintiff-Respondent (hereafter, Respondent) in the reconstruction of State Highway 127 from October 1, 1973 through September 30, 1976 was exempt from the special fuel tax under Utah Code Ann. (1953) §41-11-50. Pursuant to such a finding, the court set aside the Tax Commission's decision and order which had required Respondent to pay the special fuel tax assessment made by the Tax Commission's staff.

RELIEF SOUGHT ON APPEAL

Appellant seeks a reversal of the trial court's decision and a reinstatement of the Tax Commission decision which imposed the special fuel tax on the fuel consumed in the reconstruction of State Road Number 127.

STATEMENT OF FACTS

The case was tried on the following stipulated facts:

1. Parson Asphalt Products, Incorporated, is a Utah corporation duly qualified to do business in the State of Utah.
2. Upon submitting the low bid for improving the quality and reconstruction of a highway between Route 108 in Syracuse, Utah and the north end of Antelope Island, known as State Highway 127, Plaintiff was awarded a contract by the State of Utah.
3. An audit of the plaintiff's records discovered untaxed purchases of "special fuel" consumed by the equipment of Parson during the reconstruction of State Highway 127. The Auditing Division of the State Tax Commission found a User Special Fuel Tax deficiency owned by plaintiff in the amount of \$24,196.82 including interest and penalty for the period beginning October 1, 1973 through September 30, 1976. The plaintiff does not contest the amount of the tax shown on the audit if it is found not to be exempt from the tax.
4. The Utah legislature designated and dedicated the road beginning at Route 108 in Syracuse, Utah, running easterly to the north end of Antelope Island as Route 127, a state highway,

in Utah Code Ann. §27-12-56(b) in 1965 and it has been continuously designated as a state highway since 1965 by Utah Code Ann. §27-12-43.1(7).

5. Due to the severe conditions present on the Great Salt Lake, Route 127 was periodically washed out, necessitating extensive reconstruction, repair and maintenance work to seek to maintain it in a condition suitable for travel. Exhibits in the form of pictures taken in 1974 are representative of the condition of the highway during these periodic washouts. Parson's exhibit No. 10 shows that contract and maintenance work.

6. Since the designation of Route 127 as a state highway in 1965, the highway has generally been suitable for passenger car travel for six to eight month intervals. In between those six to eight month intervals, repair work would become necessary to return the highway to a condition suitable for travel by passenger automobiles.

7. The "special fuel" upon which the taxes involved in this proceeding were imposed was used in the operation of and/or to propel motor vehicles and the only issue to be decided by the court is whether the taxes were properly imposed.

8. This matter was heard by the State Tax Commission on July 29, 1977 and the Commission decided that the use of the plaintiff's vehicles was upon a public highway and denied the plaintiff's claim for an exemption from the special fuel tax. This appeal followed and proceeds under Utah Code Ann. §59-24-1, et seq, better known as the Tax Court Act.

9. In the performance of the contract the motor vehicles used by Parson were non-licensed. The state gave Parson permission to use such equipment. Parson claims that this equipment was "off road" type and too large for highway use.

10. The transcript of the proceedings had before the Commission on July 29, 1977 may be considered. (R. 17,18)

ARGUMENT

POINT I

THE SCOPE OF THE EXEMPTION FROM TAXATION ON THE USE OF SPECIAL FUEL DOES NOT EXTEND TO PARSON IN THE INSTANT CONTROVERSY.

Utah Code Ann. §41-11-50(1), imposes a tax on the type of fuel used by Parson in the reconstruction of State Highway 127 when it reads:

A tax is hereby imposed at the rate of seven cents per gallon on the sale or use of special fuel, provided that the sale or use of special fuel for any purpose other than to operate or propel a motor vehicle upon the public highways of Utah shall be exempt from the application of this tax.

The exemption as provided in this subsection shall apply only in those cases where the purchasers or the users of special fuel shall establish to the satisfaction of the commission that the special fuel purchased or used was used for purposes other than to operate or propel a motor vehicle upon the public highways of Utah.

This section imposes a tax on the use of all special fuel. However, the legislature did provide a limited exemption from the application of the tax. As with all exemptions from taxation, the exemption specified in §41-11-50(1) is to be strictly con-

strued, since the release from the burden of such general statutes must be clearly shown and will not be inferred from the doubtful import of statutory language. In Re Simpson's Estate, 43 Cal.2d 594, 275 P.2d 467 (1954); and 71 Am.Jur.2d State and Local Taxation, §326.

Focusing on the exemption given by the legislature, we find that use of the fuel for "any purpose other than to operate or propel a motor vehicle upon the public highways of Utah" is exempt. The legislature further provided the scope of the exemption to be limited to "only . . . those cases where the purchasers or the users of special fuel shall establish to the satisfaction of the commission that the special fuel purchased or used was used for purposes other than to operate or propel a motor vehicle upon the public highways of Utah." (Emphasis added.)

The power to tax and the subject of taxation is constitutionally vested in the legislature and so is the power to exempt from taxation. The exemption must be clearly defined and founded upon the plain language of the enactment which grants it, without doubt or ambiguity and will not be aided by judicial interpretation. 71 Am.Jur.2d, State and Local Taxation, §326; see also, Parker v. Quinn, 23 Utah 332, 64 P.961 (1901), to the same effect; applying the rule to property tax exemptions. By its own plain terms, §41-11-50 states the exemption from the tax on special fuel arises and exists "only in those cases" where the party seeking exemption establishes a right to the exemption "to the satisfaction of the commission." Stipulation of Facts, No. 8, states

that Parson Asphalt Products did not qualify for the exemption because the Commission found that the use of the special fuel by Parson was not for purposes other than to operate or propel a motor vehicle upon the public highways of Utah. Notwithstanding the above, Appellant realizes that the Commission must act reasonably and not arbitrarily or capriciously in carrying out its duties under this statute. The following discussion will demonstrate that the Commission did not act arbitrarily, but rather, in the only way the statutes governing the situation would allow.

Parson attempts to take advantage of the exemption by claiming that the vehicles used on the road which is the subject of the audit were "off road" type vehicles and by claiming that the vehicles were not used on a "public highway." The first argument is untenable as "road" vs. "off-road" use is immaterial to the taxation issue due to the fact that the statute imposes the tax on the use of special fuel to "operate or propel a motor vehicle." Utah Code Ann. §41-11-49(a) defines the term "motor vehicle," as it is to be used in §41-11-50 as follows:

(a) Motor vehicle shall mean and include every self-propelled vehicle operated upon a highway. (Emphasis added.)

As all of the vehicles used by Parson which were the subject of the Tax Commission audit were self-propelled, the only real issue to be resolved in the exemption decision is whether the Parson vehicles were operated or propelled on the public highways of Utah.

Section 41-11-50(1) provides in two separate paragraphs that in order to obtain exemption, the parties must prove the use to have been other than on the "public highways" of Utah. The term "public highways" is not defined in the motor fuels section, but it is defined in the Highway Code; Utah Code Ann. §27-12-2, et seq. Section 27-12-2(8) provides:

"Public Highway" means any road, street alley, lane, court, place, viaduct, tunnel, culvert, or bridge laid out or erected as such by the public, or dedicated or abandoned to the public (Emphasis added.)

Combined, §41-11-50(1) and §27-12-2(8) mandates, as a matter of law, that the fuel consumed while operating a motor vehicle upon the road to Antelope Island be subjected to the special fuel tax. This follows since the legislature dedicated this roadway as a public road in 1965 when it enacted Utah Code Ann. §27-12-43.1 and created State Highway No. 127.

The above statutory provisions are fatal to any claim of exemption under the terms of the Utah Use Fuel Tax Act of 1941. This is reinforced when reference is made to Utah Code Ann. §41-11-49(c) which states:

Highway shall mean and include every way or place, of whatever nature, generally open to the use of the public for the purpose of vehicular travel notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.
(Emphasis added.)

Applying these various principles to the facts, we find that Parson operated self-propelled motor vehicles on a roadway dedicated to public use which was periodically closed until

necessary construction and repair work could be done to restore the road to its normal passable condition.

Parson's arguments that its self-propelled motor vehicles were of the off-road type, and were used on a road which would become washed out and impassable for a four to six-month period each year are simply ineffective in seeking exemption under the provisions of the Utah Code governing the audit situation. Appellant submits that this would be the case even if this court were not under the obligation to strictly construe the statute which Parson claims grants the exemption against such exemption.

The best Parson could argue under these provisions is that the dedicated public road, State Highway No. 127, became impassable for a four to six-month period thereby becoming closed to the use of the public during that period and thus ceased to be a highway for purposes of the Utah Use Fuel Tax Act of 1941. This argument fails to meet the test used by the courts in deciding whether an exemption from taxation will be extended. The test being — plain, unambiguous, unmistakable language establishing the exemption without the aid of judicial interpretation. In the instant controversy, there is simply no way to construe the "non-highway" argument made by Parson as such a clear statement by the legislature. This follows when the accompanying text from whence the argument comes is viewed. Section 41-11-40(c) cited above, states that every way or place, of whatever nature, generally open to the use of the public for vehicular travel is a highway for purposes of the fuel act. Appellant maintains that

this is easily interpreted as an attempt to envelope all types of roads, even trails which have just been pioneered by hunters, etc. If the way or place is open to use by the public with vehicles, it is a highway for purposes of this act. The all inclusive intent is further manifested by the language "notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair." This entire provision seems directed at and including within its coverage, all places in Utah whereon a motor vehicle may be operated by the public even if under construction or repair.

Likewise, the use of the term "public highway" in light of its expansive definition as contained in §27-12-2(8), supra, seems to indicate an intent to include roads which have merely been dedicated to public use within the purview of this statute.

In summary, the road to Antelope Island was a public highway for purposes of Utah Code Ann. §41-11-50(1) for the following reasons: First, the roadway was dedicated to the public as a state highway in 1965 (See U.C.A. §27-12-2(8)). Second, it was erected and maintained as a roadway by the public for many years prior to the commencement of work by Parson. Finally, even prior to the commencement of work by Parson, the road was generally open to public use as it was capable of travel by passenger automobiles for a six to eight-month period each and every year. Applying the statutes governing the instant controversy to the above facts leads to the conclusion that the special fuel consumed in rebuilding the highway to Antelope Island was subject to taxa-

tion. A fortiori, when all of the above is considered in light of the fundamental legal principle that exemptions from taxation are to be strictly construed with all doubts construed against the one claiming exemption, there can be no other conclusion reached than that the assessment of the special fuel tax was lawfully proper as mandated by the legislature of Utah.

POINT II

THE TRIAL COURT'S FINDING THAT THE ROADWAY IN QUESTION WAS A TOTALLY NEW ROAD IS IN DIRECT CONTRAVENTION OF THE STIPULATION OF FACTS GOVERNING THIS CASE.

In the trial court's Memorandum Decision, it was stated that the new plan of constructing the roadway to Antelope Island was so grossly different than the original plan, that a reasonable mind cannot characterize it other than as the construction of a totally new road (R.20). In the Conclusions of Law section of the trial court's Memorandum Decision, the court expands on this finding by stating that no reasonable mind could find other than that the fuel used during the construction period was not used upon the public roads. The court continued by concluding that State Highway No. 127 did not come into existence until it was constructed by the Respondent contractor.

Such findings and conclusions are totally erroneous and contradict the parties' Stipulation of Facts. Paragraph 2 of the stipulation reads:

Upon submitting the low bid for improving and reconstruction of a highway between Route 108 in Syracuse, Utah and the north end of Antelope

Island, known as State Highway 127, Plaintiff (Parson's) was awarded a contract by the State of Utah." (Emphasis added.) (R.17)

Paragraph 3 states that the audit assessment was for "purchases of 'special fuel' consumed by the equipment of Parson during the reconstruction of State Highway 127. . . ." (R.17)

Paragraphs 4 and 5 also take for granted that it was the reconstruction, albeit major reconstruction, but reconstruction nonetheless, of an existing public highway known before and after the reconstruction as State Highway 127. (R. 17,18)

Testifying before the Tax Commission, Mr. Mark Wilson, a Parson's engineer, stated that a supplemental agreement was entered into between the state and Parson. This supplemental agreement provided for the repair of the existing road to a sufficient condition so that its equipment could travel from the mainland to the island (R.74,75).

The trial court's Findings and Conclusions that Parson's construction work on State Highway 127 was construction of a "totally new road" flies in the face of the facts, both as they existed and as stipulated.

This erroneously conclusion was apparently the trial court's basis for reversing the Tax Commission in its finding of taxability. This is apparent when one reads the last two sentences of the trial court's decision. They read:

The Court views this project factually, and as a totally new right-of-way. The Court therefore rules as a matter of law that it follows that the fuel utilized in the construction is not taxable.

Appellant submits that the case on appeal is one wherein the trial court has rendered a decision which manifestly misapplied the facts and made a finding clearly against the weight of the evidence.¹ As this is the case, appellant urges this court to reverse the trial court and find that the special fuel consumed in the reconstruction of State Highway 127 was fuel used to operate or propel a motor vehicle upon a public highway which mandates the payment of the special fuel tax.

CONCLUSION

The scope of the exemption from taxation on the use of special fuel is very narrow, and in the words of the statute applies "only in those cases where the purchasers or the users of special fuel shall establish to the satisfaction of the Commission that the special fuel purchased or used was used for purposes other than to operate or propel a motor vehicle upon the public highways of Utah." Both informal and formal hearings were had before the Tax Commission where the Respondent fully presented its views. However, the Tax Commission was not convinced that the use of the fuel was other than on the public highways and imposed the special fuel tax. As exemptions must be clearly defined and will not be aided by judicial interpretation, the exemption simply does not apply to Parson and the only inquiry should be whether the Tax Commission acted arbitrarily and capriciously in so finding that the special fuel was used on a public highway.

¹ For cases wherein this court has been willing to reverse the lower court as to its findings of fact see Jewell v. Horner, 12 Utah 2d 328, 366 P.2d 594 (1961) citing Jensen v. Howell, 75 Utah 64, 282 P. 1034; Capps v. Capps, 110 Utah 468, 175 P.2d 470.

The Commission did not act arbitrarily as is demonstrated by reference to the laws governing this case. Section 41-11-50 imposes a tax on the sale or use of special fuel for the operation and propelling of motor vehicles upon the public highways of Utah. "Motor vehicle" is defined by §41-11-49(a) as follows:

Motor vehicle shall mean and include every self-propelled vehicle operated upon a highway.

Paragraph (c) of §49 defines "highway" as follows:

Highway shall mean and include every way or place, of whatever nature, generally open to the use of the public for the purpose of vehicular travel notwithstanding that the same may be temporarily closed for the purpose of construction, reconstruction, maintenance or repair.

Thus, it can be seen that the scope of the exemption is very narrow indeed as the word "highway" is very broadly defined as "every way or place, of whatever nature." It was further narrowed by the definition of "highway" which states that such a highway remains a highway notwithstanding that it was "temporarily closed for the purpose of construction, reconstruction, maintenance or repair."

The lower court's decision was based a conclusion that the construction of State Highway 127 during the period of this audit, was the construction of a totally new road. This is totally in contravention of the Stipulation of Facts and facts as they existed, and this alone should be cause for reversal of the lower court's decision because without that conclusion, there is no basis for the decision.

Appellant respectfully requests this court to reverse the trial court so that the special fuel tax may be imposed on

the fuel consumed during and for the reconstruction of State Highway 127 from Syracuse to Antelope Island.

DATED this 11th day of February, 1980.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Brief of Defendant-Appellant Utah State Tax Commission were mailed, postage prepaid, to LaVar E. Stark, Attorney at Law, 2651 Washington Blvd., Suite No. 10, Ogden, Utah 84401, this 11th day of February, 1980.

